IN THE HIGH COURT OF BOMBAY AT GOA

APPEAL FROM ORDER NO. 38 OF 2002.

Shri Anant Voiro Gaonker,
major, married, agriculturist,
businessman, resident of
Kirlapal-Dabal,
Taluka Sanguem, Goa. .... Appellant.

VERSUS

1. Shri Shantaram Surya Gaonkar,
major, married,
Indian National,
resident of Kirlapal, Codli,
Taluka Sanguem, Goa.

2. Kushavati Surya Gaonker,
major, Spinster, Indian
National, resident of
Kirlapal, Codli,
Taluka Sanguem, Goa.

3. Umethi Shantaram Gaonker,
of major age, spinster,
Indian National,
resident of Kirlapal,
Taluka Sanguem, Goa.

4. Shri Shashikant Surya Gaonker,
major, Indian National,
resident of Kirlapal, Taluka
Sanguem, Goa.

5. Shri Mangesh Surya Gaonkar,
major, Indian National,
resident of Kirlapal, Taluka
Sanguem, Goa.

6. Shri Govind Surya Gaonker,
major, Indian National,
resident of Kirlapal,
Taluka Sanguem, Goa.

7. Smt. Mangal Rohidas Gaonker,
major, Indian Nationa,
resident of Kirlapal,
Taluka Sanguem, Goa.

8. Smt. Pandharem S. Gaonker,
major, Indian National,
resident of Kirlapal,
Taluka Sanguem, Goa.

9. Smt. Sundarem S. Gaonker,
of major age, Indian National,
resident of Kirlapal,
Taluka Sanguem, Goa.

10. Shri Ashok Surya Gaonkar,
major, married,
resident of Kirlapal,
Taluka Sanguem, Goa. ... Respondents.

Mr. M.S. Sonak, Advocate for the Appellant.

Mr. M.B. D'Costa, Senior Advocate with Mr. J.A. Lobo, Advocate for the Respondents No.1 to 4.

CORAM: V.G. PALSHIKAR, J.

DATE: 10TH OCTOBER, 2003.

ORAL JUDGMENT:

This is an Appeal against the Order by which an application of the plaintiff under Order 39, Rules 1 and 2 of the Code of Civil Procedure was rejected. The contention in the Appeal is that there are certain documents on record showing prima facie possession of the plaintiff.

2. Opposing the Appeal, learned counsel appearing on behalf of the respondents, submitted that the observations of the learned Trial Judge in para 9 be noted. It is an admitted position that both the plaintiff and the defendants have applied for regularisation of their encroachments done by them. The question of regularisation of such encroachments

is pending before the competent authority. The argument is therefore that when such proceedings are pending, grant of injunction or refusal thereof would adversely affect any of the parties.

3. Interest of justice would be met if it is directed that the regularisation of the proceedings to continue and be decided as per factual situation existing and law applicable without being influenced in any manner by the prima facie observations made in the Order impugned in this Appeal.

4. The appeal is therefore disposed of with a direction to ignore the prima facie finding and proceed with the regularisation proceedings. In view of the fact that the Suit is pending, the plaintiff shall have the right to file fresh application for injunction in the event of any fresh threat to his possession. Till the proceedings for regularisation are complete, parties to maintain status quo as of today.

V. G. PALSHIKAR, J.

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